No. 79-1794

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979

THE PEOPLE OF THE STATE OF MICHIGAN
Petitioner

v.

GEORGE SUMMERS
Respondent

ON WRIT OF CERTIORARI TO
THE MICHIGAN SUPREME COURT

JOINT APPENDIX

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DOCKET ENTRIES

1974	
October 14	Complaint and warrant filed.
October 16	Defendant arraigned on the warrant.
October 22	Defense motion to consolidate with No. 74-07989 for exam purposes only granted.
October 22	Preliminary examination held; defendant bound over for trial.
October 22	Waiver of arraignment on the information filed.
November 12	Motion to suppress evidence and dismiss case noticed for November 19.
November 19	Order suppressing evidence, quashing information and dismissing case filed.
1975	
January 17	Claim of Appeal filed.
March 19	Appellant's Brief, and Motion to Extend Time filed.
April 2	Motion to Extend Time granted by Court of Appeals.
July 24	Case noticed for submission.
1976	
April 26	Opinion affirming trial judge released by Court of Appeals.

Docket Entries

May 14	Application for Leave to Appeal filed.
1977	
February 8	Order granting Application for Leave to Appeal granted by Michigan Supreme Court.
1979	
December 27	Opinion affirming Court of Appeals released by the Michigan Supreme Court.
1980	
February 29	Rehearing denied.

PRELIMINARY EXAMINATION TRANSCRIPT

STATE OF MICHIGAN
IN THE RECORDER'S COURT
OF THE CITY OF DETROIT

THE PEOPLE OF THE STATE OF MICHIGAN,

-vs-

Case Number

74-07993

GEORGE SUMMERS,
Defendant.

PROCEEDINGS HAD AND TESTIMONY TAKEN upon the EXAMINATION in the above-entitled cause, before the HONORABLE HENRY HEADING, Judge of the Recorder's Court of the City of Detroit, on Tuesday, October 22, 1974.

APPEARANCES:

JOHN McCLOSKEY,
Assistant Prosecuting Attorney,
Appearing on behalf of the People.

ROBERT MITCHELL
Attorney-at-Law,
Appearing on behalf of the Defendant.

JOSEPH J. GONDOL
Official Court Reporter

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Detroit, Michigan
Tuesday, October 22, 1974
11:10 o'clock a.m.

- - -

THE CLERK: Case No. 74 07989, The People vs. Dwight Jerome Calhoun. The offense, violation of the state controlled substance act, knowingly and intentionally possessing heroin.

It's an Examination.

MR. MITCHELL: Now, your Honor, for purposes of Examination I would move to combine these two, 89 and 93. I think we could hear them both; the same facts, pretty much. For Examination only.

THE CLERK: Case No. 74 97993, The People vs. George Summers. The offense, violation of the controlled substance act, knowingly and intentionally possessing heroin.

MR. MC CLOSKEY: What did you just do, Bob?

MR. MITCHELL: Put them both together; it is the same thing.

(4) ROGER LEHMAN,
was called as a witness by the People, and having been first duly sworn by the Court Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MC CLOSKEY:

Q Tell the Court your name, please.
A Roger Lehman.
Q And what is your occupation, sir?
A A Detroit Police Officer.

Q Were you so employed on October 10th of this year, at around 10:10 p.m.?
A Yes, sir.
Q You were on duty at that time?
A Yes, sir.
Q And at that date and time did you have occasion to be in the vicinity of 9356 Mansfield?
A Yes, sir.
Q Would you tell the Court, please, what brought you to that particular address at that time?
A I went there to execute a search warrant.
Q All right. Would you tell the Court what occurred upon your arrival at that particular address?
A I approached the premises and had a conversation with the man (5) that just exited from the premises.
Q Officer, did you see him exit the premises?
A Yes, I did.
Q All right. Would you tell the Court the substance of that conversation?
A I identified myself as a police officer, and I asked this man if he lived there.
Q Did he respond to your —
A. Yes, he did.
Q — question?
A And at that time I showed him a copy of the search warrant; told him to open the house up if he could.
Q And did he in fact open up the house for you?
A No; he told me that he couldn't because he left his keys inside, he would have to ring and talk into a box and talk with somebody on the inside and have them open it up.
Q All right. What action did he take?
A He went to the porch and pushed a buzzer, and there is like a — like a PA system of some sort —

THE COURT: Hold it just a minute. Judge Gillis.

(Whereupon, a short recess was taken.)

THE COURT: Go ahead, Mr. Prosecutor.

Q (By Mr. McCloskey) Did anyone answer that — answer the door at that point, officer?
A (6) Well you could hear a voice come back over that system.
Q All right.
A George told him, "Hey, Dwight, let me in." Some words to that effect.
Q All right. And were you in fact let in?
A No. A short period of time had elapsed and the door was opened, and a person later identified as Dwight Calhoun was standing in the doorway.

I told him that I was a police officer, to open up the door.

He just stood there. So I attempted to open the storm door, and found it to be locked.

And at that time Dwight slammed the door shut in my face.

Q All right. This individual that you are referring to as Dwight, do you see him in the courtroom today?
A Yes, I do.
Q Would you point him out to the Court?
A He is seated at counsel's table, and he is across the table from Mr. Mitchell.

MR. MC CLOSKEY: All right. The record should reflect that the witness has pointed to and identified the defendant Dwight Jerome Calhoun, the defendant on File No. 74 07989.

Q (By Mr. McCloskey) All right. After the door — When the (7) door was slammed, officer, what action did you take?
A Well I stepped back, and there was three uniformed officers on the porch, I told them to knock the door in.

Q Did you force the door at that point then?
A Yes.
Q The individual that you have identified as Dwight Calhoun, did you identify yourself to him as a police officer?
A Yes, I did.
Q All right. Upon entering the premises, officer, what if anything did you observe?
A I pursued Mr. Calhoun into a bedroom downstairs.
Q Okay. Did you observe him do anything after he entered the bedroom?
A Yes. As I entered the bedroom a short few steps behind him, he tossed a pack onto the bed.
Q All right. Did you take any action with respect to that pack, officer?
A Yes. I subsequently retrieved that pack, and examined it and found it to contain what I believed to be heroin.

THE COURT: Do you see Mr. Calhoun in the courtroom?

THE WITNESS: Yes, your Honor, I do.

(8) THE COURT: Where is he?

THE WITNESS: He is seated at counsel table, across from Mr. Mitchell.

THE COURT: All right. What is he wearing?

THE WITNESS: He has on a, looks like a brown imitation leather waist-length jacket.

THE COURT: All right.

Q (By Mr. McCloskey) All right. Did you observe the contents of that envelope, officer?
A It was two plastic bags held together by a rubberband.

Q All right. Did you form any opinion as to contents?
A I believed it to be heroin.
Q And what did you do with the two plastic bags?
A I subsequently placed them into evidence.
Q All right. What lock — What did you — What number did you place that evidence on, officer?
A I would have to refer to my report.
Q All right, would you refresh your recollection?
A That lock-seal envelope would be 14-72629.
Q All right. Were any other individuals arrested in your presence on the premises?
A Yes, sir.
Q And were other individuals searched in your presence on the premises?
A (9) Yes, sir.
Q Do you see any of those other individuals here in court today?
A Yes, sir.
Q Would you point them out to the Court, please, and describe what they are wearing.
A George Summers, who is seated to the left of Mr. Mitchell, wearing a tan or a brown sweater.

MR. MC CLOSKEY: All right. The record should reflect he has pointed to and identified the defendant on File No. 74 07993 George Summers.

Q (By Mr. McCloskey) What, if anything, was confiscated from Mr. Summers in your presence?
A A plastic bag containing suspected heroin.

MR. MITCHELL: I would object to anything he got from Mr. Summers.

THE COURT: Why?

MR. MITCHELL: Well I don't know where he was when he got it from Mr. Summers. He said that he found something down in the downstairs bedroom in the presence of Mr. Calhoun.

THE COURT: Yes.

MR. MITCHELL: There has been no testify that Mr. Summers was down there at this point, or any — or whatever part of the house he was in.

(10) THE COURT: What were the facts and circumstances that caused you to get — What did you get and how did you get it?

THE WITNESS: With reference to Mr. Summers.

THE COURT: Yes. If you got anything.

THE WITNESS: Well, I didn't confiscate the pack from Mr. Summers personally, that was confiscated by Officer Conant, but I was in their presence when it was confiscated, and that was in the living room.

THE COURT: From his person?

THE WITNESS: That's correct.

THE COURT: All right. Go ahead.

Q (By Mr. McCloskey) So it's your testimony, officer, that your partner, Officer Conant, searched and confiscated from the defendant George Summers in your presence a certain amount of narcotics, is that correct?
A That is correct.
Q Suspected narcotics.
A That is correct.
Q All right. Who placed that on evidence, if you know?
A That — I put it — Well, that would be Officer Conant who put that pack on evidence.
Q All right.

MR. MC CLOSKEY: No further questions of witness.

(11) MR. MITCHELL: Is that the only witness you are going to call?

MR. MC CLOSKEY: I'm going to have to put Officer Conant on.

MR. MITCHELL: Then can he step outside for a moment?

MR. MC CLOSKEY: All right.

MR. MITCHELL: I thought you were only going to use the one officer.

MR. MC CLOSKEY: Well I was, but he didn't place this into evidence.

CROSS EXAMINATION

BY MR. MITCHELL

Q Now, Officer Lekman, tell me this: where was George Summers when you first saw him?
A Outside, exiting the premises.
Q Was it not true, officer, that you saw him outside exiting the premises, and that you — that he left and went somewhere, didn't he?
A No.
Q He didn't go anywhere?
A No.
Q He didn't go down to Greenfield and Chicago to a Clark Service (12) Station?
A Not at that time he didn't.
Q Not at that time he didn't

I'm talking about the time before you went into his house, that's the time I'm talking about.

Did he go down to a service station at that corner?

A No, he didn't. He couldn't have.
Q All right. Now then if he didn't go down there, then, of course, it would follow that you didn't put him in your car and take him back to the Mansfield address, is that right?
A That is correct.
Q And if that's true, then you don't remember pulling a gun on him and threatening hm and telling him to come back to Mansfield; you don't remember anything like that?
A No, sir, I don't.
Q Well when you got back to Mansfield you do remember being with him outside of the door, though, don't you? Huh?
A No, I wouldn't put it when I got back to Mansfield.
Q Well you do remember being outside of this address on Mansfield with George Summers, don't you?
A Yes, sir.
Q And you do remember at that time your telling him to open the door, is that right?
A Yes, sir, I did.
Q (13) You remember that, don't you?
A Yes, sir.
Q And you remember his telling you that he was not going to open the door, or some words to that effect, is that right?
A No, he didn't say he wasn't going to open the door.
Q He didn't tell you he wasn't going to.

Well he didn't open the door because you had to force the door open, isn't that correct?

A That's correct.
Q You had to use your battering ram, is that correct?
A That's right.
Q All right. Now tell me this, Mr. Lehman: you said you had a search warrant, is that right?

A Yes, sir.
Q Now you wouldn't have this phantom search warrant on your possession with you today, would you?

THE COURT: What kind of search warrant?

MR. MITCHELL: Phantom. We never saw it.

THE COURT: Oh. Oh, I see.

Q (By Mr. Mitchell) Do you have the search warrant with you today?
A I may have a copy in the file.
Q Well, do you have your file there with you?
A Yes, sir, I do.
Q Do you mind taking a look?
A (14) No, sir, not at all.
Q While you are looking, can you tell me when you served him with a copy of this search warrant was there anybody in the world present other than I think you said you showed a copy to Mr. Calhoun, was there anyone in the world present other than Mr. Summers and Mr. Calhoun?
A At which time?
Q At the time that you initially served him with a copy of the search warrant. I presume that was the time you were standing outside of the door before you used the battering ram.
A That's the time that I showed a copy to Mr. Summers.
Q Now did you in fact serve this copy of this search warrant on this man after you were in the house?
A Yes, sir, I did.
Q All right. All right. Now, officer, tell me this: when you got inside this — jumping over some of the facts — when you got inside the house did you — was there anyone else there besides you and Officer Conant?

A Yes, sir.
Q How many other — not giving me their names -- do you have their names listed anywhere, other than —
A The other officers from my crew names listed, not the uniformed officers, though.
Q All right. All right. Now here you are.
A Thank you.
Q (15) But now when you got inside the house how many people did you see inside this house?
A When I first entered, one.
Q Well, after you first entered and after you last left, how many people did you see in the house?
A Eight. Eight.
Q Eight people all totaled?
A Eight, including — Eight, excluding the officers.
Q Eight, excluding the officers.

Now when you got inside the house — Is that where you went, to the downstairs bedroom, you said, and you saw — and you saw some — saw someone throw a package in front of you?

A I testified I saw Mr. Calhoun.
Q Now didn't you say — didn't you tell us on direct examination that Mr. Calhoun came to the door, say you saw you were the police, and then closed the door?
A That is correct.
Q Isn't that right?
A Yes, sir.
Q And then — And then you went ahead and opened the door, isn't that correct?

You opened the door right away, didn't you?

A No, I did not.
Q (16) Well someone with you opened the door right away.
A Yes, sir.

Q Is that true?
A Yes, sir.
Q All right. And when you got in the house he was sitting down in the bedroom, and just as you walked in the bedroom he threw this packet of heroin right out in front of you, is that what happened?
A No, sir.
Q Well what did he do, did he secrete it?
A I testified I pursued him in the bedroom, he wasn't sitting down.
Q You pursued him to the bedroom?
A That is correct.
Q And then when he got in the bedroom he threw the packet down in front of you?
A Yes, sir.
Q Is that right?
A Yes, sir.
Q All right. Okay, Mr. Lehman. All right. Now after he threw that packet down in front of you and you and he were in the bedroom who else was in the bedroom besides you and Mr. Calhoun?
A No one.
Q No one. Now on the basis of that you went out and you search (17) everybody in the premises, is that right?
A No, sir.
Q Huh?
A No, sir.
Q Well you searched George. George was outside.
A I didn't search George.
Q Well somebody searched George.
A Yes, sir.
Q All right. And he wasn't even in the house when you first saw him?
A That is correct.
Q Well, —

THE COURT: Well where was he when he was searched?

THE WITNESS: In the living room, your Honor.

THE COURT: Well how did he get inside of the house?

THE WITNESS: He accompanied us inside.

THE COURT: What do you mean he accompanied you inside?

THE WITNESS: He said it was his house, your Honor.

THE COURT: Oh. Did you tell him to come in?

(18) THE WITNESS: I told him to come in.

Q (By Mr. Mitchell) You told him to come in, huh?
A Yes, sir.
Q You mean you brought him back, isn't that right? You ordered him in the house?
A No, sir.
Q Isn't that right? And you ordered him in the house, and then he was in the living room, he wasn't in the bedroom, was he?
A No, sir.

THE COURT: Did you give him the search warrant while you asked him to accompany you inside?

THE WITNESS: I believe I gave him the search warrant. I showed him the search warrant outside and gave it to him in the living room.

MR. MITCHELL: He said he did that after he got into the house. He already told me that on cross.

THE COURT: All right. I just wanted to be sure. Go ahead.

MR. MITCHELL: Yes. He said he showed him the warrant after he got inside. Showed it to him and gave it to him after he got inside, after he had broken the door down.

Q (By Mr. Mitchell) Now listen here, Mr. Lehman, now when you searched this young — Mr. Summers, did you search everybody else in the house, the other six people?
A (19) I didn't search Mr. Summers.
Q Well shoever did. I mean, you know, one of your brother officers.
A Officer Conant.
Q Were all of the people searched?
A Yes, they were.
Q All right. That's what I want to know, sir.

And they weren't all in the bedroom, downstairs bedroom, were they?

A No, sir.
Q All right. All right. Now did you ever — You work narcotics, I don't have to explain this to you, you know, you understand exactly what I mean.

Do you remember royally whipping Summers, Calhoun and Fudge and Johnny Leland and all of them; do you remember that?

A Royally whipping them?
Q Yes. Beating them. You know, striking them, hitting them?
A No, sir.
Q Huh?
A No, sir.
Q All right. Well did you notice that — Did you arrest Mr. Summers?

A No, sir.
Q Did you arrest Mr. Calhoun?
A (20) Yes, sir.
Q Did you see Mr. Summers when he was arrested?
A Yes, sir.
Q Well how do you account for all the bruises — the bruises on Mr. Summers and his jaw being swollen; do you remember that at all?
A No, sir, I do not.
Q You don't remember anything like that. Okay. All right. Now —

That's all. That's all.

MR. MC CLOSKEY: One further question, your Honor. I seem to recall —

THE COURT: We aren't going to finish this up, so I have got to be some place at a quarter of —

MR. MC CLOSKEY: Well one question, and I will put the stip in, your Honor.

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MR. MC CLOSKEY:

Q It seems to me, if I recollect your testimony correctly, officer, it wasn't the same as Mr. Mitchell presented it.

Did you — When did you say you showed the defendant the copy of the search warrant?

(21) MR. MITCHELL: That's been asked and answered twice. I asked it —

THE WITNESS: Outside —

MR. MITCHELL: — and he asked it.

Q (By Mr. McCloskey) All right.
A — when I identified myself as a police officer.

MR. MC CLOSKEY: I thought that was what you answered.

It has been my recollection of your recounting the testimony, Mr. Mitchell, that you recounted it incorrectly.

THE COURT: You said one question now.

MR. MC CLOSKEY: That's it.

THE COURT: We will be back here at 1:30, —

MR. MC CLOSKEY: Thank you, your Honor.

THE COURT: — and finish up this Exam.

MR. MITCHELL: Because I have got to be in Garden City at 2.

THE COURT: Let's say by 1 o'clock. Be back here at 1 o'clock.

MR. MITCHELL: I will be here.

THE COURT: All right.

MR. MC CLOSKEY: Mr. Mitchell, do you need this officer any more?

(22) MR. MITCHELL: No, no. Let brother Lehman go.

Mr. Lehman is a tough man. Oh, yeah, about the money; about the money. There is a matter of $1500.

Can you give us the money back, Lehman?

THE WITNESS: Let's wait and see what happens with the Exam.

MR. MC CLOSKEY: It's evidence.

MR. MITCHELL: Evidence? Okay. Okay, Rog.

All right, 1 o'clock now, Judge.

THE COURT: Yes.

(At 11:35 o'clock a.m. the Examination of the above-entitled cause was recessed until 1 o'clock p.m. of the same day, Tuesday, October 22, 1974.)

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(23) Detroit, Michigan
Tuesday, October 22, 1974
11:17 o'clock p.m.

- - -

(Whereupon, the Examination in the above-entitled cause was resumed pursuant to the noon recess; all parties present as previously indicated.)

- - -

THE COURT: All right, we will resume this Examination.

MR. MITCHELL: All right, sir.

ANTHONY CONANT,
was called as a witness by the People, and having been first duly sworn by the Court Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MC CLOSKEY:

Q State your name for the record, please.
A Anthony Conant.
Q And what is your occupation, sir?
A Police Officer, City of Detroit.
Q Were you so employed on October 10th of this year?
A (24) I was.
Q And were you on duty at 10:15 in the evening —
A In the evening.
Q — of that particular day?
A I was.
Q At that time and date did you have occasion to go to the vicinity of 9356 Mansfield?
A I did.
Q Is that in the City of Detroit?
A It is.
Q All right. Officer, would you relate to the Court what brought you to that particular address?

A I was there along with the rest of the crew to execute a search warrant.
Q Okay. And upon arriving at that particular address, where did you go?
A To the side of the house. Let's see. It would be the north side of the house.
Q All right. Did there come a time when you returned to the front entrance of that house?
A Yes, I did.
Q Okay. And what did you observe when you arrived at the front entrance?
A Well I heard people talking on the front porch, as I started around, because I thought they were — I thought (25) I heard the door open and I thought they were going in. Then when I just about got to the front I heard the door slam, and then Patrolman Lehman ordered the uniformed officers to force entry.
Q Okay. Did you go into the house, officer?
A I did.
Q Upon entering — Was there anyone besides the uniformed officers on the porch when you arrived on the front porch?
A The defendant George Summers.
Q What is he wearing in court today?
A He has a beige sweater and a white shirt; sitting next to counsel.

MR. MC CLOSKEY: The record should reflect that he's pointed to and identified the defendant George Summers.

Q (By Mr. McCloskey) Mr. Summers, in addition to the officers, were on the front porch, is that correct?
A That's true.
Q And when the door went down, where did Mr. Summers go?
A I — In the living room with myself.
Q All right. Who had the search warrant, officer?
A Patrolman Lehman.

MR. MITCHELL: That assumes —

THE COURT: Say what?

MR. MITCHELL: That assumes a fact not (26) in evidence. I don't think he's testified yet as to any search warrant.

MR. MC CLOSKEY: Well I think —

MR. MITCHELL: Mr. Conant has not.

THE COURT: Well some mention has been made of it.

MR. MITCHELL: By a prior witness, but not by this witness.

THE COURT: Yes. All right.

MR. MC CLOSKEY: I was asking him who had the search warrant. I think that one existed.

THE COURT: Yes.

MR. MC CLOSKEY: Is already in evidence.

Q (By Mr. McCloskey) All right, officer, did you take any action with respect to the defendant Summers after you had both went into the living room?
A Right then, you mean, immediately upon entering the living room?
Q That's correct.
A No, not right there I didn't.
Q All right. Did there come a time when you did take some action?
A Yes.
Q And when was that, officer?
A Well it was after the house was secured, I believe

everybody (27) was in the living room, I was — I went to the basement; underneath the bar there was two plastic bags concealed under the bar, of suspected narcotics.

Q All right.

A And I brought them upstairs.

Q All right. Had you made a determination of the owner, or who the owner of the house was at this time, officer?

A Before I went to the basement, you mean?

Q Before or immediately after returning from the basement?

A After I came back from the basement I found out that the owner was Mr. George Summers.

Q And how did you make that determination, officer?

A I believe I asked him, and then Mr. Summers himself stated that he lived there, this was his house.

Q Mr. Summers made that statement?

A Yes.

Q All right. After he made that statement, and after you found this heroin in the basement, what action did you taken in respect to Mr. Summers?

A I placed him under arrest for VCSA, and read him his rights, and a custodial search, and he had suspected heroin in his jacket pocket. So I told him he was also being charged with possession.

Q All right. What did you do with the suspected heroin that you found in his pocket, officer?

A (28) It was placed in evidence in a lock-seal folder.

Q Would you give the Court the lock-seal folder number?

A It was lock-seal folder 72 — 14-72628.

Q And did you convey that someplace, officer?

A That was conveyed downtown to the Scientific Lab.

Q And do you know what happened to the contents of lock-seal folder 14-72629; was that conveyed anywhere?

A To the Scientific Lab, to the best of my knowledge.

Q All right.

MR. MC CLOSKEY: Nothing further.

CROSS EXAMINATION

BY MR. MITCHELL:

Q Officer Conant, when you first went to this address on Mansfield were you with anyone?
A Yeah, I was in the company of a crew.
Q Of a crew. How many people were in that crew? Not the names, just — You happen to have the names too, don't you?
A Yes, I believe.
Q The members of the crew. How many were in that crew?
A How many were in the crew?

Myself, Officer Lehman, Sgt. Mazigian, Patrolman Ashford, McKinney, in plainclothes, and in uniform there was officer — I believe it was Deitch, and there was (29) another officer there, I don't know — I can't remember his name. Fitzgerald.

Q All right. And you said when you arrived at the Mansfield address — Were all of you — You went to the side door, is that right?
A It's not a door, just the side of the house.
Q The side of the house.

Now did you and Lehman come in the same car?

A I believe we did. I don't recall.
Q All right. Now when you and Lehman first went to the house, did you see — did you see Mr. Summers here?
A Did I see him?
Q Uh-huh.
A Well when I was taking my position on the side of the house the door was then open and he was coming out. He was — I think he was on the steps, he was walking out of the house. But I didn't go to the front door, so I —

Q Out of the side door?
A The front door. He came out of the front door.
Q Okay. Now you said you were around by the side, but there was no door on the side?
A No.
Q Yet you — Are you telling us that standing around on the north side of this house you did see someone in fact leave?
A (30) I said —
Q You're not telling us that, are you?
A No, I'm not.
Q You're telling us that you heard a door slam, is that right?
A Well, no that's not what I said either.
Q What did you say?
A I said that while I was taking my position on the side of the house, while I was running up to the house Mr. Summers was on his way out of the house.
Q You got him out of the house now?
A He was on — He was walking like down. I think there was 2 or 3 steps there.
Q Now when you saw him come out of his house, didn't he in fact get in his car and drive away?
A No, he did not.
Q You don't remember that?
A No, I do not.
Q Now do you remember the corner of Greenfield and West Chicago?
A Do I remember it?
Q Do you remember it, or are you familiar with it?
A I'm familiar with it.
Q All right. Now there is a filling station on that corner, on one of the four sides of that corner; did you know that?
A I believe there is.
Q Now did you see Mr. Summers when he went down to that station; (31) did you follow him?
A No, I did not.
Q You did not follow him.

Did you wait for him until he got his car all attended, spark plugs and washed and points and everything like that?

You don't remember waiting for him out there on the apron of the driveway?

A No, I do not.
Q All right. Do you remember calling — Do you remember calling Mr. Summers over to your car and telling him to get in your car and ride back with you?
A No, I do not.
Q You don't remember that, do you?
A No, I don't.
Q All right. Well when you came around to the front of the house you did see — you did see Mr. Summers, is that right?
A I did.
Q And Mr. Summers was outside of the house, is that right?
A He was.
Q Now Mr. Summers was outside of the house, and you took him back in the house, is that right?
A I did.
Q Now he wasn't a member of your crew, was he?
A No, he was not.
Q (32) And you didn't think he was going to aid you at all in making this raid, did you?
A I did not know what he was going to do.
Q What was your search warrant for, to search the premises at 9673 Mansfield?
A I did not have a search warrant.
Q You didn't. All right. Thank you.

Now you didn't have a search warrant. Now is there any way you want to change that at all?

A I said I wasn't in possession, there was a search warrant for the house.
Q What makes you think there was a search warrant for this house?

What makes you think that?

A What makes me think there was a search warrant for the house?
Q Yes, sir. What makes you think —
A I seen the search warrant.
Q You saw the search warrant?
A Yes, I did.
Q And the search warrant said to search what?
A I didn't read the search warrant.
Q Well you have had search warrants before?
A Yes, I have.
Q And this search warrant was to search a particular address, (33) wasn't it?
A Right.
Q Do you remember the address?
A 9356 Mansfield.
Q And you are already at that address, weren't you?
A What do you mean I was already at that address?
Q Weren't you at that address? You were around the side of the house. Was that the address you intended to search?
A That's correct, yes.
Q Now it didn't say anything in that search warrant about searching people outside of the house, did it?
A No, it didn't
Q All right. Now you took Mr. Summers back in with you, is that right?
A I did.
Q Now were you around there when they first knocked on the door?
A I wasn't there. I wasn't in front when they knocked on the door.
Q Well, I was going to strike that question anyway.

I meant to ask you was there a knock on the door that you heard?

Did you hear a knock on the door?

A No, I don't. I can't recall hearing anybody knock on the door.
Q (34) All right. And the only thing you can recall is somebody knocking the door down, is that right?
A Well I heard talking on the front porch, then I walked to the front, and then I seen them knock it down.
Q Now when you — Now knock down, now I am talking about a door; did you see anybody knock down George Summers off the porch onto the ground; did you see anybody do that?
A No, I didn't
Q You didn't see anybody. Did you ever lift him up and bring him back up on the porch as he was knocked down?
A No, I did not. After we gained entry Patrolman Lehman told me to bring him on inside.
Q All right. You took him on inside?
A I did.
Q Now when you went inside, what did you do immediately after you got inside?
A Well I was in the living room with Mr. Summers.
Q All right. You kept Brother Summers right close to you, is that right?
A He was there.
Q All right. What did you do after you kept him in your close view like that; did you every go anyplace else in the house?
A Not until after the house was secured, then I went to the basement.
Q And did Mr. Summers go with you down into the basement?
A (35) No, sir. He stayed in the living room.
Q All right. And that's the bsement where you claim you found some traces of some white powder, is that right?
A I found two bags of suspected narcotics.
Q All right. Now after you secured the house, about how many people would you say were in this house besides — besides Summers, and I presume Calhoun was there, so besides these two people how many civilians?

A I think there was six other people.
Q Six other people in this house?
A Five or six.
Q And how many of these people lived in this house? Did you ever ascertain that?
A No, I did not.
Q All right. Now when you came back you arrested — you arrested Summers for VCSA, is that right?
A True.
Q And what was — How had he committed a VCSA at the time you arrested him?
A He owned up that he — He said that he was the owner of the house, and after finding the narcotics sitting in the basement.
Q I see. Did he ever — Did anybody else ever own up to living there besides him, or don't you know?
A I don't know.
Q All right. So there are other people there now when you — (36) Now you claim after that then you put him under arrest and then you searched him, is that right?
A I gave him his rights and searched him.
Q Gave him is rights and searched him. And you told us what you — some of the things you found when you searched him.

Now tell me this, while you were searching him, or after you had searched him first — his person, did you ever find any money on his person?

A I believe there was some money on him.
Q Do you remember how much that was?
A No, I don't.
Q Did you ever make a record of it?
A Did I?
Q Yes, sir.
A No, I didn't.
Q Well I mean when I say — I don't mean you, you know, just you singularly, I mean did you or someone else in your presence make a record of it?

A There was a record made of it.
Q Well I wonder — All right. All right, hold that — hold that for a moment now.

Now tell me this, did you ever search any other parts of the house, other than Summers' person?

A The basement.
Q (37) Did you ever find any money in any other parts of the house?
A Did I ever? No, I did not.
Q I don't mean you.
A Well I do not know what anybody else found. I did not find it.
Q All right. Tell me this, who made the — you never saw the search warrant?
A I seen —
Q Is that right?
A I told you I seen the search warrant.
Q What I mean to say is you never saw it in terms that you remember what you saw on it?
A Right.
Q You don't remember, is that right?
A Right.
Q And you didn't see anybody served a search warrant, is that right?
A Not that I can recall.
Q All right. Now tell me, number two, do you have anywhere in your possession an inventory of what you found?
A A return?
Q Yes, sir.
A I do not have it, no.
Q You don't?
A I did not make a return.
Q (38) Would you have it anywhere in your files?
A I believe there is a return in the files.
Q All right. Now would the return indicate that you had found a certain amount of money in the return?
A Everything that was confiscated would be on the return.

Q All right. Now you searched him. Do you remember how much money, approximately how much money?
A I have no idea.
Q You don't know whether it was 3000 or 4000 or —
A No, I don't.
Q — 100, or anything like that, right?
A (Shaking head.)

MR. MITCHELL: All right. That's all, sir. That's all for me.

MR. MC CLOSKEY: One question, your Honor.

REDIRECT EXAMINATION

BY MR. MC CLOSKEY:

Q Officer, you said that you heard some talking on the porch after taking your position on the side of the building?
A Right.
Q You returned to the front of the building, you got there in time to see the other officers knocking down that door, is (39) that correct?
A Right.
Q Before you got around to where you could observe them knocking down the door, did you hear anything else besides the talking?
A Just conversation between Mr. Summers and somebody inside.
Q Okay. It seems to me — Did you ever hear a door slam while you were —
A I said I heard a door slam. There was a door slam.
Q You did say that?
A Right.
Q MR. MC CLOSKEY: Okay. Thank you. Nothing further.

Your Honor, at this time —

Do you have any further questions?

MR. MITCHELL: No, I have no further questions.

MR. MC CLOSKEY: Then at this time, your Honor, it is my understanding that defense counsel and the defendants, both of them in this case, have agreed to the following stipulation:

That is to waive the production of the evidence, stipulate to the chain of evidence in this case, and to waive the testimony of the chemists, in this case which would be a Lorin Budzinski on File No. 74 07989, that (40) is as to defendant Calhoun, and a Dennis Lippert on File No. 74 07993, that is as to defendant Summers.

Furthermore, defense counsel, for purposes of Examination only, of course, will stipulate that the — to the contents of the report that these chemists have submitted. That is, should the chemists have appeared today and testified, Lorin Budzinski would testify that lock-seal folder No. 14-72629 was examined and found to contain two clear plastic packets of tan powder, the powder having weighed 12.7 grams, and containing heroin.

Should Dennis Lippert have appeared today and testified, he would have testified that he examined the contents of lock-seal envelope No. 14-72628, and found that it contained one envelope containing a brown powder, amounting to 8.5 grams, and that powder contained heroin.

Is that correct, counsel?

MR. MITCHELL: Yes, I — that is correct. I mean that is correct as far as any stipulation is concerned.

MR. MC CLOSKEY: Yes. For the purposes of examination.

MR. MITCHELL: Uh-huh.

THE COURT: All right.

(41) MR. MC CLOSKEY: At that — At this point, your Honor, — Well, I can see there is a problem on one of these files, and I would like to make a short oral argument before I make my motion, if the Court will permit.

THE COURT: All right. Now what about the introduction of the evidence? Are you objecting to that?

MR. MITCHELL: As to Mr. Summers there is. I just stipulated to whatever they — the chemist would say would be —

THE COURT: All right.

MR. MITCHELL: But I have not — No, sir, I have not agreed.

THE COURT: All right, you have not offered the exhibits then?

MR. MITCHELL: No, sir, he has not.

THE COURT: All right. He says he wants to make an argument. Go ahead.

MR. MC CLOSKEY: Right. Perhaps — I move to admit the evidence at this point, your Honor, and allow Mr. Mitchell to make his argument, then I will respond.

MR. MITCHELL: Well, we can make it

altogether. I am going to object, and whatever you want to (42) say —

THE COURT: For what reasons do you object, that's what I want.

MR. MITCHELL: Oh, all right. All right.

Now let's get to the first one that he — the first one first, George Summers.

Your Honor, there is no reason at all that Summers should have been brought back into the house and then searched. There are just — I don't know where to begin, there is just so much law in his behalf that I thought I was going to let the Prosecutor — I thought he was going to make a motion to dismiss as to Mr. Summers. I didn't want to get into a long argument.

Is that what you were planning to do, is make a motion to dismiss as to Mr. Summers?

MR. MC CLOSKEY: No, I was planning on listening to your argument on my motion to admit the evidence, Mr. Mitchell.

MR. MITCHELL: Oh. All right.

Well I have never heard before, and I wanted — I had intended to — if this had been a younger Court I was going to — I was going to introduce testimony from the defense, but somehow with this Court I feel as though I can talk through the defense rather than going through — rather than having both of these gentlemen take (43) the stand.

I have never seen a case where the evidence here shows that the man is plainly outside of his house.

One officer says that he never saw the serving of a search warrant, yet he was around there to see them all go in together. And he didn't — And we are talking about a question here, we are talking about fractions of a minute. he says he came back, he never saw the serving — the serving of a search warrant.

The other officer is not sure as to — to me he said the man got it after he got in the house, but on recorss (sic) to the Prosecutor he said he gave it to him — he told him about it, at any rate, on the outside.

Now there was no reason to bring the man back into the house, the premises — the search warrant if they had one was to search the premises.

Now to bring the man back into the house just about violates everything I can think about. It is certainly a harsh entrapment case. Certainly when you bring him back inside. No reason. They had no reason to search him outside, it was all inside.

Now we get inside. Now you remember Mr. Lehman's testimony that he came and he said that he pursued Calhoun, who claims he had stopped — who had slammed (44) the door in his face. He used his battering ram, came in and followed Calhoun into a downstairs bedroom.

Now the only reason that he told you that he slammed the door and had to use the battering ram was to tell you inferentially that Calhoun knew they were the police.

Now, Calhoun knows the police are here, the police are right behind him in hot pursuit, right step after step, he runs into the bedroom, and what does he do, he reaches into his pocket and throws a bag of heroin right at the officer's face. That just violates any — any kind of credibility; any kind of credibility.

Now, what happens after that? They get in the house — we have a crew here of approximately 7 or 8 men, and who do they find? They find a house full of people, eight different people.

Now they go from there and they search the house, and what do they do? They go down in the baement somewhere, and they come up with a packet of what they called — well we won't argue that. A packet of heroin. Whose is it? I don't know whose it is, there are eight people in this house at this point, eight civilians.

Then he comes back and arrests Mr. Summers for VCSA. To-wit, what part of VCSA? It wasn't his exclusive control. This man was outside, not down in the (45) basement, and further, he was in the house, was in the living room, and standing there like that.

Now what do the police do? The police come back up now and search him, and claim they found some narcotics on his person.

I say no, no probable cause to search this man at that point. None whatsoever. And certainly the man should not have even been in the house. That's my point your Honor. I don't — I don't — I would ask that the matter be dismissed both as to — there is no doubt as to Mr. Summers, but both as to Summers and to Calhoun, on the basis of what we have heard here so far.

MR. MC CLOSKEY: With respect to the defendant Calhoun, first, your Honor. I think that defense counsel's re-enactment of what occurred in his words, of course, does sound incredible. But I think if we look at what the officer testified, Officer Lehman testified as to what occurred. This defendant was seen at the front door, he slammed the front door in the officer's fact, and then at that point they use a

battering ram to gain entry into the house.

Now upon gaining entry into the house Officer Lehman took off in the direction that Mr. Calhoun had taken off into. And, as I understand, they went down into the basement, a basement bedroom. This was a hot pursuit, (46) if you will, type situation.

And I think that Mr. Calhoun's actions were reasonable. The point — the thing that I believe he was trying to do was to get off his person narcotics, relizing (sic) that the place was being subjected to a search under a search warrant, the worse thing that could have happened to Mr. Calhoun would have been to have been searched and had narcotics found directly on his person.

So what he did, as soon as he got into this bedroom, thought he was out of view, is discard a bag of narcotics that he had. What he didn't realize is that Officer Lehman was close behind him and actually saw him toss those narcotics at a — on a bed.

And I don't think there is anything inherently incredible about that. This has all happened in a very quick amount of time, and Mr. Calhoun simply misjudged how much time he had to get rid of what he had on him.

Going now to the defendant Summers, your Honor; that presents somewhat of course a different problem.

We have moved also to admit the evidence in this case.

In this case, your Honor, I think we have to take the testimony of both officers together. We (47) are dealing with the question really of probable cause.

Now first of all both officers testified that they saw Mr. Summers leave that house located at 9356 Mansfield as they approached the house with the search warrant to execute the search warrant.

Officer Lehman testified that outside the house he showed this defendant Summers a copy of the search warrant. And at that point in time, your Honor, Officer Lehman testified that defendant Summers indicated to him that this was his house, that he didn't presently have his keys, but that they could buzz and have the cousin admit them to the house. So they went up on the porch and the officer testified that's exactly what defendant Summers did, he used some sort of an intercom system, pressed the button, someone answer on the other end, there was conversation, and eventually this man's cousin, if you want, I don't know whether they are related or not, but a person, Mr. Calhoun showed up at the door and opened the inside door, leaving the screen door locked.

Now defendant Summers was in fact on the porch at the door when Mr. Calhoun slammed the door and the officers used their battering ram to get in.

Now, since Mr. Summers had already at that point admitted to the officers that this was his house, that it was his house that was the subject of the (48) execution of the search warrant, and he accompanied them inside the house.

Now whether or not these officers specifically ordered him in or not, I am not sure whether it is relevant at this point, because at this point Mr. Summers already made an admission that this is his house that is the subject of a search warrant. And since it is his house, he is the person that should receive the search warrant, should receive the return and should be present when the house is searched.

Now we have laws covering the execution -- the proper execution of a search warrant also in this State, and I think it was reasonable to have Mr. Summers there while the search warrant was executed.

Now the officers then -- Officer Conant searched the rest of the premises and found in the basement two bags of suspected narcotics.

Now it's Mr. Summers at this point who has admitted that this is his home, and when a person owns a home, lives in that place, it's expected he has control over various things in that house.

THE COURT: Let me ask you a question.

MR. MC CLOSKEY: Yes, your Honor.

THE COURT: Do you have the authority to go down in the basement?

(49) MR. MC CLOSKEY: Under the search warrant, your Honor, they had the authority to search the entire premises.

THE COURT: That's in the serach warrant?

MR. MC CLOSKEY: Do you have a copy of the search warrant?

I would assume that they exceeded their range, your Honor, but that might be proper subject of a different type of hearing in this court. But I would -- I don't think that question has been raised.

Yes, your Honor, it is generally search the premises known as 9356 Mansfield, which is a 2-story single dwelling. And then it goes on to describe the rest of the -- more specifically the type of dwelling it

is, and exactly where it is located.

But it's to search the entire premises.

THE COURT: It says that, entire premises?

MR. MC CLOSKEY: No, it says premises, your Honor, but I think that would assume the entire premises, it doesn't limit it to the first floor or the second floor or any specific room in the place. I think that's a reasonable reading on the fact of the search warrant, that it means the entire premises, since it is not (50) limited.

All right, now once Officer Conant found this heroin in the house, returned upstairs and again received confirmation from Mr. Summers that he in fact owned the house, I submit to the Court that he at that point had probable cause to arrest Mr. Summers for control of heroin, a violation of the state controlled substance act.

Now once — And I believe that is probable cause, your Honor, and once he had that probable cause, then of course the search of the person naturally follows. And that in fact the heroin was found on Mr. Summers' person is what he has been charged with in this case. The heroin found during that custodial search after he had been arrested for control of heroin.

THE COURT: What about what they found in the basement, is that —

MR. MC CLOSKEY: That, your Honor, is what the officer was acting on. I think his actions were reasonable.

THE COURT: No, no. I am asking you, is that evidence — was he charged with possession of that?

MR. MC CLOSKEY: No, he was not, your Honor.

THE COURT: Oh. All right. Okay, go (51) ahead.

MR. MC CLOSKEY: I think we don't — However, I think the law is clear that we don't look at — we don't use hindsight in determining whether an officer was reasonable in his actions. A Prosecutor sitting up on the 11th floor trying to decide whether or not Mr. Summers will be charged with what is found in the basement has a lot more law at his disposal and has a lot more hindsight, but I think this officer at that time can reasonably assume that Mr. Summers admitted ownership of the place had control of the heroin he found in the basement. And I think, therefore, the arrest, even though it did result in a warrant subsequently, was a valid arrest and search following, your Honor.

And, therefore, I renew my motion to admit the evidence in this case on both defendants and on both files.

MR. MITCHELL: Your Honor, I don't think it should be admitted. I think Mr. Summers was arrested on the outside of the house. I don't think he came back in freely and voluntarily. I think he was arrested and I think the record will show that he was arrested and brought back into the house forcefully. If they had a search warrant they could just serve the search warrant. There is nothing in the search warrant that says (52) they had to search the person of Mr. Summers out on Mansfield. The search warrant was to search the premises. Now they went —

THE COURT: What about the fact he was coming out as they were going to execute the search warrant?

MR. MITCHELL: Well he still was not in the -- the search warrant is to search the premises, not to search this man. They had no — they had no — even after the man got in the house they had no cause to search the man.

THE COURT: You mean if he walked back in willingly?

MR. MITCHELL: He didn't walk back in.

THE COURT: I am asking you that question, if he did.

MR. MITCHELL: If he had walked back in willingly, of course, the case would have a little bit different angle. But the first officer testified that they took him back in, if you remember that.

THE COURT: No, I think he said he walked back in with him.

MR. MITCHELL: Yes. Well I understood him to say he took him back in, because obviously he had taken him back in the house, because they had to use (53) a battering ram to get inside.

Now if it was a man's house, I've never seen a man use a battering ram to get inside his own house. If it was his own house he would have a key, he knew how to open the door, he could walk in, or if there is somebody in there who would know him would admit him. They treated him like he was a stranger. He hollered in the house, and said, "George." And they said, "George who?" A man came to the door and looked at him and slammed the door in his face and walked away. Now that doesn't seem to me like he is the man of the house. It seems to me like he is a trespasser there.

Now we don't have anything — And they haven't introduced anything here in testimony that shows this man owns this house, or it isn't his house. They haven't shown us one water bill, one electric bill, one gas bill, one rent receipt, nothing; no cleaning receipt, nothing to say. They just sit down and say this is his house, this is George's house.

Now I don't think that is sufficient.

THE COURT: All right. Anything further?

MR. MITCHELL: That's all, your Honor. On the admission of the evidence.

MR. MC CLOSKEY: I think we have exhausted argument and cross-argument and rebuttal.

(54) I still move to admit the evidence, and once the Court rules on that I will make my motion to bind the defendant over.

THE COURT: All right. The evidence will be admitted.

MR. MC CLOSKEY: At this time, your Honor —

MR. MITCHELL: I wonder if we can — that's evidence. We would like to submit some testimony, your Honor, if you don't mind.

THE COURT: I have no objections.

MR. MITCHELL: All right.

THE COURT: Go right ahead.

MR. MITCHELL: All right. Before you make your motion.

Take the stand.

That's all, we don't have anything more.

THE COURT: I thought you wanted to put in some testimony?

MR. MITCHELL: No, we are going to change our mind. We will save it for another time.

THE COURT: All right. Mr. Prosecutor?

MR. MC CLOSKEY: Yes. The evidence having been admitted on both files, your Honor, at this time (55) the People would move to bind over the defendant George Summers on File No. 74 07993 on the charge contained in the complaint and warrant.

And also would move to bind over defendant Dwight Jerome Calhoun on File 74 07989, on the charge contained in the complaint and warrant.

MR. MITCHELL: Well, your Honor, again I would renew my motion to dismiss, certainly as to Mr. Summers; certainly as to Mr. Summers, the outside man.

And, of course, I make it on behalf of both men, but certainly as to Mr. Summers.

THE COURT: All right. The Court finds that the crimes charged in the complaints and warrants in these two cases were — the crimes were committed within the corporate limits of the City of Detroit, and that there is probable cause to believe these defendants committed that crime.

Therefore, they will be bound over on the charges contained in the complaints and warrants in these cases.

All right, now what are their bonds?

THE CLERK: A thousand personal each, your Honor.

THE COURT: How much?

THE CLERK: $1,000 personal bond on each.

(56) THE COURT: On each man?

THE CLERK: Yes, sir.

THE COURT: All right. Ask them to stand up, I want to question them.

Mr. Calhoun, where do you work?

DEFT. CALHOUN: I don't.

THE COURT: Say what?

DEFT. CALHOUN: I don't.

THE COURT: No. How old are you?

DEFT. CALHOUN: Twenty-one.

THE COURT: Why don't you work?

DEFT. CALHOUN: I'm a bowler.

THE COURT: You're what?

DEFT. CALHOUN: A bowler.

MR. MITCHELL: A professional bowler, your Honor.

THE COURT: Oh, you're a professional bowler?

MR. MITCHELL: Yes. Average 202.

THE COURT: Do you win anything with that?

DEFT. CALHOUN: Yes.

THE COURT: 202?

DEFT. CALHOUN: Yes.

THE COURT: You mean if you hustle, that isn't going to win no professional bowling.

(57) MR. MITCHELL: Oh, yes, Judge; that is tournament bowling; 202.

THE COURT: You might get in the tournament, but you aren't going to win no $20,000 with 202. No. I see those things on television, you know. No, no.

MR. MITCHELL: A lot of times we are higher than 202.

THE COURT: Say what?

MR. MITCHELL: A lot of times we are a lot higher than 202, your Honor. We get very high.

THE COURT: Wait. I didn't hear what you are saying.

MR. MITCHELL: I say a lot of times we are a lot higher than 202.

THE COURT: You're a lot higher?

MR. MITCHELL: Yes, sir.

THE COURT: Yes, that's what I'm saying.

MR. MITCHELL: That's right.

THE COURT: You have to be higher than that to win.

MR. MITCHELL: Oh, yes, we —

THE COURT: Unless you are hustling.

MR. MITCHELL: We have got a year-round average of that 202.

(58) THE COURT: Well that's good.

MR. MITCHELL: In and out. That's pretty good.

THE COURT: Nothing wrong with that.

MR. MITCHELL: Yes sir.

THE COURT: Have you ever been arrested and convicted for any crime anywhere?

DEFT. CALHOUN: No.

THE COURT: All right. Now what about Mr. Summers?

MR. MITCHELL: He's pretty clean too, your Honor.

THE COURT: Where do you work?

DEFT. SUMMERS: Martin's Cleaners.

THE COURT: Martin's Cleaners?

DEFT. SUMMERS: Right.

THE COURT: How long have you worked there?

DEFT. SUMMERS: About 6 or 7 years.

THE COURT: Have you ever been arrested and convicted for any crime anywhere?

DEFT. SUMMERS: Right.

THE COURT: For what?

(59) DEFT. SUMMERS: Grand larceny.

THE COURT: How many times?

DEFT. SUMMERS: Well I was in Jackson — I was convicted twice, but it was together. I have been up there once.

THE COURT: And how long ago was that?

DEFT. SUMMERS: In '67.

THE COURT: '67?

DEFT. SUMMERS: (Nodding head.)

MR. MITCHELL: Not since he has been working has he been in any trouble.

THE COURT: You came out, and you haven't been in any trouble since?

DEFT. SUMMERS: No.

THE COURT: Do you use narcotics?

DEFT. SUMMERS: No, I don't.

THE COURT: Never did?

DEFT. SUMMERS: Never have.

THE COURT: Never been an addict?

DEFT. SUMMERS: No.

MR. MC CLOSKEY: Your Honor, I — if I may, with respect to defendant Summers, since he says he has never been arrested and convicted, I find it hard to explain how come he has a police identification.

MR. MITCHELL: No, he says he has been.

(60) MR. MC CLOSKEY: Oh, he has been.

THE COURT: Yes. No, Calhoun said he has not been.

MR. MITCHELL: Calhoun.

THE COURT: Summers just stood up and said he had been to Jackson.

MR. MITCHELL: Yes.

THE COURT: He knows what it is like up there, he wants to go back.

MR. MITCHELL: No, we don't want to go back, your Honor.

THE COURT: Yes. If he keeps fooling around he will be; in this courtroom he will, he will go back up there as far as that bus can get him up there.

All right. Now I am going to tell you, if either one of you are involved, and especially with any narcotics, I am going to know about it, that's the system we have here, and when it comes to my attention — I am not saying when you are convicted now, I am saying if you are involved; if you are around it, you are going to be over there in Sheriff Lucas' hotel before you go to Jackson; that will be a little rest stop for you, you know.

Now don't go out there and fool around, you have better go and protect that job you have got, and you had better increase your bowling average, or you will (61) be back here, see? See?

DEFT. CALHOUN: Yes, sir.

THE COURT: All right, I will continue both bonds, and you go back to Judge who? Which one of the Judges?

THE CLERK: Judge Borman.

THE COURT: You will get your pre-trial — I mean your blind-draw Judge.

All right.

-oOo-

MOTION TRANSCRIPT

STATE OF MICHIGAN

IN THE RECORDER'S COURT

FOR THE CITY OF DETROIT

PEOPLE OF THE STATE OF MICHIGAN,

vs. No. 74-07993

GEORGE SUMMERS,
Defendant.

_____/

MOTION

Proceedings had in the above entitled cause before the Honorable Robert J. Colombo, Judge of the Recorder's Court, on Tuesday, November 19, 1974.

APPEARANCES:

JOHN McCLOSKEY,
Assistant Prosecuting Attorney
Appearing on behalf of the People.

CAROL CHAMP,
Attorney at Law
Appearing on behalf of the Defendant.

REPORTER: A. L. Kirk

TYPIST: K. MacRae

(2) THE COURT: File No. 74-07993, People of the State of Michigan vs. George Summers. This is a Motion to quash the information on the grounds that the magistrate abused his discretion in binding the Defendant over for trial in that there was no probable cause for his arrest for the violation of the Controlled Substance Act under the conditions that were testified to at the Preliminary Examination and that the search of his person being an unconstitutional invasion of his rights under the search and seizure provision of the 4th Amendment of the United States Constitution as applied by the 14th Amendment to the states, he is entitled to have the evidence suppressed and the information quashed and the Defendant discharged. After reading the Examination of some sixty-two pages the Court, Mr. McCloskey, is of the opinion that No. 1, that the magistrate should not have admitted the evidence at the Preliminary Examination because the evidence at the Preliminary Examination on October 22, 1974, shows that the Defendant was walked back into the house during the execution of the search warrant, that he did not re-enter the premises voluntarily, that the other Defendant who was bound over for trial and quite properly, actually did throw the narcotics on the bed and that even though there were other narcotics found on (3) the premises there was still no probable cause at this time to search the Defendant Summers for any offense in connection with the execution of the search warrant even though he was listed as the owner of the premises based upon the affidavit for the search warrant at the time it was issued because he was outside of the premises.

The question I ask you, is could the police have arrested Summers outside of the house and searched him and seized him and arrested him for violation of the Controlled Substance Act?

MR. McCLOSKEY: The answer would have to be no, your Honor, they could not have arrested

him outside of the house as he approached the house.

THE COURT: Having then forced him back into the house, how does their position then become legal? That's the problem you are going to have to explain to me, to my satisfaction.

MR. McCLOSKEY: I am not sure if I can, your Honor. Our position in this particular case is that what happened outside the house was a valid investigatory stop by the officers armed with a search warrant. The facts they had available to them at the time they approached the house is they saw a man —

(4) THE COURT: I don't have any problem with that, Mr. McCloskey. In fact it was obvious to me that they got little of no cooperation from Mr. Summers or the person inside the house. It is obvious that they had right to use reasonable force to gain entry into the premises. We've still got Mr. Summers outside the house and they bring him inside the house and that's the problem that disturbs me here. Plus there is no overt act at all from the testimony at the Preliminary Examination done by Mr. Summers which would give probable cause for the officers to search him.

MR. McCLOSKEY: All right. Mr. Summers, your Honor, as the Court has pointed out, is named in the search warrant and I could offer, make an offer of proof that he is named in the search warrant.

THE COURT: I have no problem on that. But the law also happens to be that you can't use a search warrant as justification to make a case.

In other words, to gain the fruits of illegal activity. The search warrant itself is a creature of statute and is to be construed very strictly because it's in violation of the common law and the constitution and

as such must strictly be construed by (5) any court. Given that situation and the factual situation here as it appears to the Court that the search warrant is being used as a tool to search the Defendant to gain evidence from him to establish probable cause.

MR. McCLOSKEY: Your Honor, my recollection of the testimony at the exam was that the officers, in executing the search warrant, searched the entire house and found narcotics in the basement of that house.

THE COURT: No question that they did and no question in the judgment of this Court that they could do that. However, having done that they already have Mr. Calhoun in custody, they also have Mr. Calhoun in possession of narcotics, you can't arbitrarily charge Mr. Summers with control or possession of those narcotics under People vs. Davenport.

MR. McCLOSKEY: All right. Point — well first of all, I am not sure if People vs. Davenport applies to this situation.

THE COURT: Assuming that you are going to use the search of the basement and the finding of the narcotics as probable cause, People vs. Davenport does apply.

(6) MR. McCLOSKEY: Certainly People vs. Davenport applies to the point that this man could never be convicted of possession or control of narcotics found in the basement. It's not probable cause for a police officer to make an arrest. I don't believe that Davenport holds that finding narcotics in a home and having information from the Defendant that he in fact owns that home, does not give the officer probable cause to arrest for control of narcotics. In this particular case we are dealing with an officer and, of course, with hindsight we can look back and say we

could never convict Mr. Lehman — Mr. Summers, excuse me, of control of narcotics found in the basement, at least on the Davenport decision. But we are talking about an officer who executed a search warrant, found narcotics and had positive information that the house was owned by this particular individual.

So he had probable cause that a crime had been committed.

THE COURT: Had they arrested him for loitering in a place of illegal occupation, I might agree with you but they didn't arrest him for that. They just arrested him and then made a search and then found narcotics.

(7) MR. McCLOSKEY: No, your Honor, that is not correct.

THE COURT: What did they do then?

MR. McCLOSKEY: They found the narcotics in the basement and then came upstairs and Officer — the officer at that point confirmed with Mr. Summers that he, in fact, owned the house and at that point the officer testified at the Exam that he arrested Mr. Summers for violation of the Controlled —

THE COURT: Right. For what offense could he possibly have arrested Mr. Summers at that time, for violating the Controlled Substance Act?

MR. McCLOSKEY: Probable cause to believe a crime was committed, narcotics found in the basement.

THE COURT: People vs. Davenport. He has no basis, in fact, for that under Davenport.

MR. McCLOSKEY: There is no basis in

fact for a conviction, your Honor, there is no basis in fact for a warrant for Mr. Summers who would be charged with possession of controlled narcotics, the narcotics found in the basement.

THE COURT: What about the fruit of the poisoned tree? If he couldn't be prosecuted under (8) Davenport and convicted, how does then the fact that he is then arrested and they find additional narcotics on him, if originally it's tainted, doesn't it become tainted in its future application?

MR. McCLOSKEY: That's a correct interpretation of the fruit of the poisonous tree but I don't believe it applies in this case. First of all, we have found narcotics legally under a search warrant, we had a search warrant to search the entire premises. So there is probable cause to believe a crime had been committed. We had Mr. Summer's admission that he is the owner of the house. It is our contention that this gave the offier probable cause to believe that Mr. Summers committed the felony of possession or control of narcotics.

Certainly it does not give us a basis for prosecuting Mr. Summers for the narcotics that were found in the basement. But the officer's actions aren't viewed as if he was a legal scholar. I think all of the questions have dealt with the question of arrest. I cite People vs. Harper, 369 Michigan. They say it is not approached from the view of a legal scholar but on facts based, viewed by the police officer at the time of the arrest. So we have the —

(9) THE COURT: I agree with you, I agree that he didn't have it.

MR. McCLOSKEY: We have the narcotics found, admission of the ownership of the house and we had a search warrant in which Mr. Summers is listed as

the person from whom the buy was made. I say these facts taken in toto, your Honor, would give the officer who is not a legal scholar, probable cause to believe that Mr. Summers had —

THE COURT: He didn't have probable cause and that's the thing that is wrong with the whole situation. Plus the fact that they made the man go back into the house and to the extent that Judge Heading in making his decision found that he went in voluntarily, Judge Heading misconstrued the testimony not only of one police officer but of both police officers who testified. Because one police officer, a layman, said that he told him to come into the house. The other police officer who testified said that Lehman directed him to bring him into the house and he did bring him into the house.

For that reason, given the totality of the circumstances here, the Court feels that the motion (10) to suppress is well taken and the Court does suppress the evidence, does quash the information, the Defendant is discharged and his bond is cancelled.

MISS CHAMP: Thank you very much.

* * *

CERTIFICATE OF COURT REPORTERS

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

This is to certify that I, A. L. Kirk, stenographically reported the foregoing proceedings had in the above-entitled cause, and that the annexed and foregoing typewritten transcript constitutes a complete and accurate report of such proceedings and my stenographic notes so taken.

/s/A. L. Kirk
OFFICIAL COURT REPORTER

SEARCH WARRANT AND AFFIDAVIT

SEARCH WARRANT
(Case #747-14-23 — #14 PNU)

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

TO THE SHERIFF OR ANY PEACE OFFICER OF SAID COUNTY:

On this day Roger Lehman, affiant, having subscribed and sworn to an affidavit for a search warrant, and I having under oath examined affiant, am satisfied that probable cause exists;

THEREFORE, IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN, I command that you search the following described place:

Premises known as 9356 Mansfield which is a 2 Story single-dwelling. Premises is located on the East side of Mansfield, North of Ellis, and South of W. Chicago. Premises is located in the City of Detroit, County of Wayne, and the State of Michigan.

and to seize, secure, tabulate and make return according to law the following property and things:

1. HEROIN.
2. ANY OTHER NARCOTIC MATERIALS AND PARAPHERNALIA.

The following facts having been sworn to by affiant in support of the issuance of this Warrant:

1. Affiant is a member of the Detroit Police Department working in conjunction with a confidential informant regarding the purchase of bulk Heroin from the premises at 9356 Mansfield.

2. Affiant knows the informant to be credible and reliable, and has used the informant in the past on numerous occasions. Information and actual Heroin purchases by the informant ha resulted in the arrest of numerous persons, with (6) six convictions and (8) eight cases pending.

3. On October 9, 1974, the informant working in conjunction with the affiant went to 9356 Mansfield and purchased bulk heroin. The informant stated that he purchased the heroin from a b/m known as "GEORGE" and who is described as being approx 31-33/5-10/170/med bld/med complx/and wearing his hair cut short.

4. On the date indicated the informant prior to entering the premises was searched for narcotics. Search revealed that the informant was not in possession of any narcotics. The informant was then furnished with $25.00 in SS funds for which to make the purchase with. Upon the informants exit from the premises, the informant met with the affiant, and was searched with suspected heroin being recovered. Suspected Heroin was subsequently placed into evidence on LSE #14-72623 and sent to the scientific lab for analysis. Analysis conducted by the scientific lab proved the substance to be heroin.

(Recorder's Court Seal - No. 8370)

SEARCH WARRANT RETURN

Return to Search Warrant

ISSUED UNDER MY HAND THIS 10th DAY OF OCTOBER, 1974.

Dalton A. Roberson
Judge of Recorder's Court for the City of Detroit, County of Wayne, State of Michigan, and a Magistrate

RETURN TO SEARCH WARRANT

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

I hereby certify and return, that by virtue of the within Search Warrant to me directed, I have searched for the goods and chattels therein named, at the place therein described*

(*Strike either (1) or (2), whichever is inapplicable.)

(1) and that I have such goods and chattels before the Court, described as follows:

(Underline denotes handwritten copy)

2 Plastic bags cont. dark powder susp. Heroin

2 Large plastic bags cont. white powder susp. Cocaine

1 Small plastic bag cont. white powder susp. Cocaine

1 Bottle of Dextrose

1 Pack of Mannite Conoscenti — (susp. mix)

1 Execerin bottle cont. 19 capsules

Search Warrant Return

1 Green can cont. susp. Marijuana

1 Plastic bag cont. susp. Marijuana

3 Measuring spoons

4 Needles

2 Syringes

1 Welch scale

1 Hashish pipe

1 Winchester 30.06 w/Bushnell scope

1 BSA pellet gun w/scope

2 Cooking cap

$527 (susp. narcotic proceeds)

1 Erfurt Luger, ser. #7209

(2) Striken

(s) R. Lehman, D.P.D.
Municipal Police Officer

(s) George Summers

DATED AT: 11:00 PM
this 10th day of October
A.D., 1974
Address: 9356 Mansfield